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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Sheldon J. Wolfe, Alternate Chairman
Gustave A. Linenberger, Jr.

In the Matter of	)	Docket No. 50-289-SP
	)	
METROPOLITAN EDISON COMPANY	)	(ASLBP 79-429-09-SP)
	)	
(Three Mile Island Nuclear Station, Unit No. 1)	)	(Restart Remand on Management)

August 31, 1984

MEMORANDUM AND ORDER
RULING ON FIRST GPU-TMIA DISCOVERY DISPUTE

On July 21, 1984 Intervenor TMIA submitted its first set of interrogatories and request for the production of documents to Licensee. Licensee moved for a limiting protective order on August 15 which was opposed by TMIA on August 20.

The discovery requests are said to be relevant to the Dieckamp-mailgram issue. The essence of the dispute is that TMIA requests in various ways a large amount of information about plant conditions and procedures and about who was involved during the accident at TMI-2. Licensee argues that since the mailgram subject matter is confined to the inference of core damage and hydrogen generation and combustion to be drawn from the containment pressure spike and initiation of containment spray during the afternoon of March 28, 1979,

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the discovery response should be so limited.[1] E.g., Motion at 2. The gist of TMIA response is that the operators' knowledge of the plant conditions during the accident relates to whether they interpreted the pressure spike indications as a real pressure spike. That fact in turn would relate to whether GPU management, including Mr. Dieckamp knew or should have known that the pressure spike and containment spray actuation was an indication of a hydrogen explosion as a consequence of core damage.

In arriving at the bases for our ruling on the protective order motion, we again look back at our initial decision and the pertinent parts of ALAB-772 on the Dieckamp-mailgram issue. The basic issue is very narrow -- the integrity of Mr. Dieckamp himself as inferred from his state of mind about the accuracy of the mailgram. TMIA's pleading indicates that it perceives one subissue to be whether GPU's management, as an institution, knew or should have known about the combustion of hydrogen and its implications on March 28, 1979. Stated another way, was there an institutional imputation of this information to Mr. Dieckamp so that he must be deemed to have knowledge? E.g., TMIA's response at 3.

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1 Mr. Dieckamp stated in a May 9, 1979 mailgram to Congressman Udall that

> [t]here is no evidence that anyone interpreted the "pressure spike" and the spray initiation in terms of reactor core damage at the time of the spike nor that anyone withheld any information.

The Board rejects this version of the issue. This is not a corporate agency or imputed scienter legal issue. It is a factual issue pertaining to Mr. Dieckamp personally.

We do not, however, entirely reject TMIA's argument that knowledge of plant conditions form a contextual background against which it might be determined whether anyone interpreted the pressure-spike indication and containment spray to be symptoms of hydrogen combustion and core damage. Such knowledge is a predicate for determining whether that interpretation could have been transmitted to Mr. Dieckamp. However, since the key subissue here is whether anyone actually made that interpretation, not whether anyone should have made that determination, it is appropriate to grant the protective order with respect to persons other than Mr. Dieckamp.

For the most part we deny the request for protection as it relates to Mr. Dieckamp's knowledge of plant conditions. Again, as noted above, Mr. Dieckamp's state of mind about the accuracy of the mailgram is the question. That is why we permit an inquiry into whether his knowledge of plant conditions permits the inference that he knew his mailgram was inaccurate. In addition we accepted as a subissue in our July 9 order the question of whether Mr. Dieckamp should have known about the events referred to in the mailgram and whether he made any effort to

learn about them. That is, was there a careless disregard for the accuracy of the mailgram?[2]

For the foregoing reasons we generally applied practical criteria in ruling on the particular requests for a limiting protective order. As to persons other than Mr. Dieckamp, interrogatory responses and document production may be limited to matters relating to generation and subsequent combustion of hydrogen, pressure spike and the initiation of containment spray.[3] In general we have denied the protection motion respecting information on a wide variety of plant conditions and procedures during the accident transmitted to, possessed by and transmitted by Mr. Dieckamp.

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2 In a telephone conference of August 30, counsel for Intervenors suggested that intentional insulation from the facts would be relevant. We agree.

3 During the August 30 telephone conference call, counsel for TMIA (when presented with the Board's ruling on the protective motion) expressed the concern that Licensee might be unduly restrictive and not produce information not exactly identified as a hydrogen explosion. This is an unfounded concern. For example, Licensee seeks no protection against interrogatory 32 which asks the identity of all who heard a "thud", "thump", or other noise indicating that hydrogen or some other explosion or anomaly may have occurred. In granting protective relief, we recognize and expect that Licensee will have to make reasonable judgments to comply with the spirit of the limitation.

Documents

As to Document Requests Nos. 1, 2(b) through (i), 3, 4, 6(b) through (v), and 9, Licensee's motion for protection is granted.

Document Request 5 pertains to interviews of Mr. Dieckamp. This aspect of the motion is partially denied. The request seeks all information about "the TMI-2 accident" without time or other limitation.[4] The response may be limited to plant accident conditions and procedures from March 28 through 30, 1979. Similarly Request 6(a) goes beyond plant conditions and procedures for the three days and may be limited in the same fashion, but must otherwise be satisfied.

Interrogatories

The motion for protective relief on TMIA's interrogatories is granted except as noted below.

As an exception to our general criteria for relief, we deny the motion on Interrogatory No. 3. It seeks the identity of persons participating in the emergency organization or command team and all who participated in the "think-tank" meetings. It is reasonably calculated to lead to the discovery of admissible evidence.

The motions respecting Interrogatory 16 are denied except for the words "the TMI accident, or" in the first paragraph.

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4 Licensee has reserved the general right to object to TMIA's discovery demands on the grounds of burden.

The motion respecting Interrogatories Nos. 17 through 22 to the extent that it relates to Mr. Dieckamp is denied.

To the extent that the response to Interrogatory 28 would identify Mr. Dieckamp, the motion is denied.

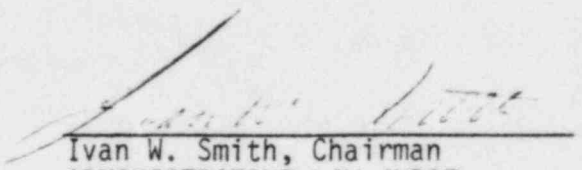
The motion respecting Interrogatory 34 is denied to the extent that it relates to conversations and discussions to which Mr. Dieckamp was privy.

As an apparent exception to the ruling criteria, the Board denies the motion for protection against Interrogatory 39.

The motion is denied on the second and third paragraphs of Interrogatory No. 48.

Interrogatory 58 demands all knowledge and information about the accident held by Mr. Dieckamp on May 8 and 9, 1979. We grant the protective request on this interrogatory. While this ruling may seem to be an exception to our criteria, it is not. The interrogatory is too broad to produce reliable responses. The other interrogatories and document requests where the protective relief was denied will produce the information required by TMIA to prepare its case.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland
August 31, 1984